

## REMARKS

Applicant thanks the Examiner for a thorough search and examination, and respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1, 3, 5, 15, and 16 are currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-20 are now pending in this application.

Claims 1, 3, 5, 15, and 16 have been amended solely for clarification purposes. That is, claims 1, 3, 5, 15, and 16 have been amended to include certain punctuation, i.e., commas, so that the limitations recited therein could be more clearly identifiable. In making these amendments, Applicant does not intend to narrow the scope of the claims in any way. Moreover, in the event that such claims are not discussed further herein, Applicant is not surrendering claim scope with regard to the Doctrine of Equivalents.

In the outstanding Office Action of May 16, 2008, the Examiner objected to the drawings. In particular, the Examiner asserted that Figures 2a and 3a should be designated as referring to "Prior Art." In response to the Examiner's objection, Applicant has labeled Figures 2a and 3a in accordance with the Examiner's suggestion.

Additionally, the Examiner asserted that Figures 2a-3c were unclear as presently illustrated. In response to the Examiner's objections, Applicant has provided replacement figures.

In the outstanding Office Action, claims 1-20 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. Applicant traverses the rejections for the reasons set forth below.

With regard to claims 1, 3, 5, 15, 16, and 18 of the present application, the Examiner asserted that the additional combination of selectable transport formats is not capable of performing any determination function. (*See, e.g.*, page 4 of the outstanding Office Action). Applicant respectfully disagrees with the Examiner's position. More particularly, Applicant submits that the limitation "determination" recited in claims 1, 3, 5, 15, 16, and 18 of the present application is not intended to indicate the performance of a determining function. Rather and contrary to the Examiner's interpretation, Applicant submits that claims 1, 3, 5, 15, 16, and 18 of the present application recite that the maximum allowable data rate is "determined" by virtue of the fact that the additional combination of selectable transport formats is set for the data transmission stream. That is, the higher than maximum allowable data rate is established by the setting of the additional combination of selectable transport formats. Hence, the term "determines" (supported at, e.g., page 5 of the present application) can be likened to the term "defines" (recited at, e.g., page 11 of the present application), which the Examiner did not choose to interpret as a limitation suggesting the performance of defining, as indicated at page 4 of the outstanding Office Action.

With regard to claims 3 and 16, the Examiner asserted that the limitations recited therein are allegedly unclear. Applicant respectfully disagrees with the Examiner's position. In particular, Applicant submits that the limitations read in light of the specification of the present application are not unclear. For example, page 3, lines 5-9 of the present application describes that a transport format combination set (TFCS) defines the allowed transport format combinations for data streams. The limitation "set of transport format combination selectable for said at least one channel" (emphasis added) recited in claims 3 and 16 merely describes with more particularity/further limits the feature of "setting an additional combination of selectable transport formats for a data stream" and the "predetermined set of selectable combinations of selectable transport formats" recited in claims 1 and 15, respectively. That is, setting the additional combination of selectable transport formats more particularly includes adding a new transport format combination to the TFCS for at least one channel within the data transmission stream.

With regard to claim 7, the Examiner asserted that the limitations recited therein are vague and indefinite. Applicant respectfully disagrees with the Examiner's position, and

directs the Examiner to, e.g., page 3, line 5-page 5, line 2 where coded “composite” transport channel (CCTrCH) is described, as well as the relationships between TFCS, transport format combinations (TFC), and transport channels, with data transmission streams. Page 13, lines 13-16 of the present application further describe that in accordance with various embodiments, a new TFC is added into TCFS which includes for the last transport channel a new TF defining a higher than actually used maximum data rate for “the transport channel” and also for the “CCTrCH.” Moreover, page 7, lines 8-13 of the present application describe an alternative embodiment, where a new channel is added to the data transmission stream (already having channels as described) and allocating to that new channel, a set of selectable transport formats. Hence, more than one channel is being contemplated in accordance with various embodiments.

Claims 1, 2, 5-15, and 18-20 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Publication No. 2004/0100918 (Toskala et al.) Applicant traverses the rejection for the reasons set forth below.

With regard to independent claims 1 and 15 of the present application, the Examiner asserted that Toskala et al. teaches all of the required limitations recited therein. Applicant respectfully disagrees with the Examiner’s position. In particular, Applicant submits that Toskala et al. fails to teach setting an additional combination of selectable transport formats which determines a higher than maximum allowable data rate into a predetermined set of selectable combinations of selectable transport formats, and using the predetermined rate amount to transmit auxiliary information.

Toskala et al. is directed to a method and system for forwarding control information in a transmission signal without having to route the information via a network controlling device. (*See, e.g.*, Abstract and paragraph [0009] of Toskala et al. Toskala et al. further describes that DTX indication bits, considered to be dummy bits, can be provided within which, control information can be transmitted if desired. Hence, the DTX indication/dummy bits can be reserved for the transmission of control information. (*See, e.g.*, paragraph [0030]-[0033] of Toskala et al.) Hence, Toskala et al. is directed merely to reserving the DTX indication bits and replacing the dummy information therein with, e.g., control information,

nothing more. (*See, e.g.*, paragraphs [0009]-[0013] and claim 1 of Toskala et al.) Therefore, Toskala et al. fails to teach or contemplate the providing of a predetermined transmission rate for auxiliary information in a predetermined channel of a data transmission stream as required in independent claims 1 and 15 of the present application.

In contrast to Toskala et al., independent claims 1 and 15 of the present application are directed to providing a transmission rate, where an additional combination of selectable transport formats are set for a data transmission stream thus determining a higher than maximum allowable data rate. That is and as described at, e.g., pages 4-5 of the present application, it is known that DTX indication bits can be reserved and replaced with control information with regard to both fixed and flexible transport channel positions.<sup>1</sup> However, various embodiments of the present application such as those disclosed in, e.g., independent claims 1 and 15 of the present application seek to improve on conventional systems and methods, such as those described in Toskala et al.

For example, page 4 of the present application indicates that with flexible transport channel positions, the place for data from different transport channels depends on the instantaneous transport formats. Moreover, the rate matching at physical layer L1 “minimizes the number of DTX indication bits for the maximum CCTrCH data rate,” and hence, “it cannot be ensured that enough DTX indication bits are always provided as means for transporting control information.” Therefore, although Toskala et al. teaches that TFC is defined “such that there is always room for DTX,” Toskala et al. still fails to teach or even suggest providing a higher than maximum allowable data rate as recited in independent claims 1 and 15 of the present application. Again, Toskala et al. never reaches the issue of how to provide “enough” DTX dummy bits, merely that DTX dummy bits can be provided.

Further still, Applicant submits that the Examiner’s interpretation of Toskala et al. is misplaced. That is, the Examiner asserted at pages 6-7 of the outstanding Office Action that: “data rate in a transport channel plus n DTX indication bits allocated for the transport channel reads on the claimed defining of a maximum allowable data rate; “some n DTX

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<sup>1</sup> It should be noted that the Toskala et al. and the present application have a common inventor, Esa Malkamaki.

indication bits within the at least N DTX indication bits in the TFC must be allocated for a transport channel” reads on the claimed higher than maximum allowable data rate by a predetermined amount; and paragraphs [0031], [0047], and [0050] of Toskala et al. somehow read on setting an additional combination of transport formats “into a predetermined set of selectable combinations of selectable transport formats. Applicant respectfully disagrees.

Again and as described above, Toskala et al. is merely concerned with the providing of DTX indication/dummy bits that can be replaced with control information. None of the above-referenced teachings of Toskala et al. are in the least bit related to transmission rates of auxiliary information in a channel. At best and from what Applicant can ascertain based on the Examiner’s arguments, Toskala et al. teaches “fast control signaling” as a result of merely replacing DTX indication/dummy bits with control information, and hence, control information can be signaled without having to involve RNCs. However, this increased speed in control signaling is merely the result of again, not having to involve RNCs (by transmitting control information in the transport channel), and is in no way analogous to providing a transmission rate for transmitting auxiliary information, such as control information. To wit, nothing in Toskala et al. references or alludes to, e.g., a higher than maximum allowable data rate being determined by setting an additional combination of selectable transport formats, let alone any sort of adjustment to allowable data rate.

Again and as described above, Toskala et al. is merely concerned with providing the DTX indication/dummy bits without regard for maximum allowable data rates. As described at, e.g., page 4, lines 14-25 of the present application, conventional systems and methods such as those described by Toskala et al. do not consider the possible minimization of the number of DTX bits, only that DTX bits are provided. As described above, with, e.g., flexible transport channel positions, rate matching minimizes the number of DTX indication bits for the maximum CTrCH data rate. Hence, in accordance with independent claims 1 and 15 of the present application, a higher than maximum data rate is provided to counteract this minimization of DTX indication bits. Toskala et al. simply does not teach or contemplate such a feature. Therefore, Applicant submits that Toskala et al. fails to teach or suggest all of the required limitations recited in independent claims 1 and 15 of the present application.

Because Toskala et al. fails to each all of the required limitations recited in independent claims 1 and 15 of the present application, Applicant submits that each of these independent claims are patentable over this prior art. Furthermore, because dependent claims 2-14 and 16-20 are each directly or indirectly dependent upon independent claims 1 and 15, Applicant submits that each of these claims are allowable for at least the same reasons as discussed above.<sup>2</sup>

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith,

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<sup>2</sup> Applicant submits that although dependent claims 3, 4, 15, and 16 were rejected under 35 U.S.C. § 112, first and/or second paragraph, no rejection on the merits was made by the Examiner. Therefore, Applicant assumes that notwithstanding the 35 U.S.C. § 112 rejections, and in light of the Examiner's interpretation thereof for examination purposes at pages 3-4 of the outstanding Office Action, no prior art cited by the Examiner reads on the limitations recited in these claims.

Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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